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FANSLOW

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCELA VAVERKOVA, an  
Individual;

**Plaintiff,**

VS.

GUCCI AMERICA, INC., a California corporation; SCOTT FANSLOW, an Individual; and DOES 1 through 25, Inclusive.

## Defendants.

Case No. 2:15-cv-08330

[Los Angeles Sup. Ct. Case No.  
BC592910]

## **NOTICE OF REMOVAL**

**[28 U.S.C. §§ 1331, 1441 AND 1446]**

**TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA, AND TO PLAINTIFF MARCELA  
VAVERKOVA AND HER ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** Defendants Gucci America, Inc., a New York corporation (erroneously sued as a California corporation) (“Gucci”), and Scott Fanslow (“Fanslow”) (collectively hereinafter “Defendants”) hereby remove the above-entitled action from the Superior Court of the State of California, for the County of Los Angeles, to this Court pursuant to 28 U.S.C. §§ 1331, 1441 and 1446(b). Removal is based on the following grounds:

## PROCEDURAL BACKGROUND

1. On August 28, 2015, plaintiff Marcela Vaverkova (“Plaintiff”) commenced this action in the Superior Court of the State of California, for the County of Los Angeles, entitled *Marcela Vaverkova v. Gucci America, Inc. and Scott Fanslow*, Case No. BC592910 (“Complaint”) against Defendants, alleging the following thirteen causes of action: (1) pregnancy discrimination; (2) pregnancy harassment; (3) failure to accommodate pregnancy; (4) failure to engage in the interactive process of accommodation for pregnancy; (5) gender-based discrimination; (6) gender-based harassment; (7) failure to prevent discrimination and harassment; (8) failure to correct and remedy discrimination and harassment; (9) retaliation for engaging in a protected activity; (10) retaliation in violation of the California Fair Employment and Housing Act, the federal Family Medical Leave Act, and the California Family Rights Act; (11) wrongful termination in violation of public policy; (12) intentional infliction of emotional distress; and (13) negligent infliction of emotional distress.

2. Gucci received a copy of the Complaint on September 23, 2015, while Fanslow received a copy of the Complaint on September 24, 2015. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint and all accompanying documents that were sent to Gucci and Fanslow.

1       3. On October 23, 2015, Defendants filed and served their Answer to  
2 Plaintiff's Unverified Complaint ("Answer") in the Superior Court of the State of  
3 California, for the County of Los Angeles. Attached hereto as **Exhibit B** is a true  
4 and correct copy of Defendants' Answer.

5       4. Exhibits A and B constitute all process, pleadings, and orders that  
6 have been filed in this action.

7       5. This Notice of Removal is timely filed, pursuant to 28 U.S.C. §  
8 1446(b) because it is filed within 30 days of both Gucci's and Fanslow's respective  
9 receipt of Plaintiff's Complaint. While the removal deadline for Gucci is October  
10 23, 2015; i.e., the date of this removal, the thirtieth (30th) day following Fanslow's  
11 receipt of the Complaint falls on Saturday, October 24, 2015, and, therefore,  
12 pursuant to Fed. R. Civ. P. 6(a)(1), the removal deadline is Monday, October 26,  
13 2015. Thus, this removal is timely as to both Gucci and Fanslow. No previous  
14 Notice of Removal has been filed or made with this Court for the relief sought.

## **FEDERAL QUESTION JURISDICTION**

16           6. Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over  
17 Plaintiff’s FMLA claim; Plaintiff’s “Tenth Cause of Action for Retaliation in  
18 Violation of FEHA, FMLA & CFRA.” Compl., ¶¶93-102. Federal district courts  
19 have “original jurisdiction” for all civil actions “arising under the Constitution,  
20 laws, or treatises of the United States.” 28 U.S.C. § 1331. Likewise, the FMLA  
21 provides that “[a]n action to recover the damages or equitable relief prescribed in  
22 [the FMLA] may be maintained against any employer (including a public agency)  
23 in any Federal or State court of competent jurisdiction by any one or more  
24 employees... .” 29 U.S.C. § 2617(a)(2). *See also Golez v. Potter*, 2012 WL  
25 3134256 at \*2 (S.D. Cal. July 31, 2012) (district court has jurisdiction of the case  
26 pursuant to the FMLA, 29 U.S.C. § 2615(a)(1)); *Jadwin v. County of Kern*, 610 F.  
27 Supp. 2d 1129, 1142 (E.D. Cal. 2009) (FMLA claims “arise out of” federal law  
28 and present a federal question sufficient to warrant federal question jurisdiction);

1       *Bloom v. Metro Heart Group*, 440 F. 3d 1025, 1031 n.2 (8th Cir. 2006) (district  
 2 courts have federal question jurisdiction over FMLA claims); *Conoshenti v. Public*  
 3 *Serv. Elec. & Gas. Co.*, 364 F. 3d 135, 140 n.2 (3rd. Cir. 2004) (removal to federal  
 4 court was proper because FMLA claim presented a federal question) (superseded  
 5 by statute on other grounds); *Ricco v. Potter*, 377 F. 3d 599, 602 (6th Cir. 2002)  
 6 (FMLA claim presented a federal question supporting jurisdiction); *Eastus v. Blue*  
 7 *Bell Creameries*, 97 F. 3d 100, 103 (5th Cir. 1996) (court affirmed district court  
 8 ruling that FMLA claim supports removal from state court because FMLA raises a  
 9 federal question); *Haywood v. Bedatsky*, 2007 U.S. Dist. LEXIS 12401, \*4 (D.  
 10 Ariz. February 20, 2007) (district court has federal question jurisdiction over  
 11 FMLA claims); *Conine v. Universal Oil Product Company*, 2006 U.S. Dist. LEXIS  
 12 14589, \*2-4, 11 Wage & Hour Cas. 2d (BNA 1374 (W.D. La. March 14, 2006)  
 13 (FMLA claim provides basis for federal question jurisdiction) (citing *Breuer v.*  
 14 *Jim's Concrete Brevard, Inc.*, 538 U.S. 691, 693 (2003)).

15       7. Plaintiff's FMLA and state-law claims derive from a common nucleus  
 16 of operative alleged facts – Plaintiff's pregnancy, her leave of absence under the  
 17 FMLA and state leave laws, and the termination of her employment with Gucci  
 18 America, Inc.; e.g. –

- 19       • “Defendants subjected Plaintiff to discriminatory, harassing and  
 20 retaliatory conduct by reason of her reported pregnancy and  
 21 pregnancy/maternity-related leaves and FMLA.” Compl., ¶10.
- 22       • “Evidently, the acts committed by Defendant Gucci were done to  
 23 harass, discriminate and retaliate against Plaintiff because of her  
 24 reported pregnancy and her lawful exercise of her FMLA and CFRA  
 25 rights. Ultimately, Plaintiff’s employment with Defendant Gucci was  
 26 unlawfully terminated without real, substantial, and compelling  
 27 reason.” Compl., ¶34

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- “I was discriminated against and harassed due to my pregnancy and gender. I was retaliated for my engagement in a protected activity, my whistle blowing action and in violation of CFRA, FMLA and FEHA. As a result, I was wrongfully terminated.” Plaintiff’s Administrative Charge attached to Complt.

6       8.     See also Compl. ¶¶ 7-36, 42, 49, 56, 63, 69, 76, 81, 86, 93, 103, 108,  
7 and 114 as well as Plaintiff's administrative charge attached to the Complaint.  
8 Thus, such claims form part of the same case or controversy and this Court may  
9 exercise supplemental jurisdiction over the state law claims. See 28 U.S.C. §  
10 1337(a) (a court may grant supplemental jurisdiction "over all other claims that are  
11 so related to the claims in the action within such original jurisdiction that they form  
12 part of the same case or controversy"); also *Trs. Of the Constr. Indus. And Laborers*  
13 *Health and Welfare Trust v. Desert Valley Landscape and Main. Inc.*, 333 F.3d 923,  
14 925 (9th Cir. 2003) (state claims are considered part of the same case or controversy  
15 if "there is a substantial federal claim arising out of a common nucleus of operative  
16 fact"); *Danner v. Himmelfarb*, 858 F.2d 515, 521 (9th Cir. 1988) (same); *United*  
17 *Mine Workers of America v. Gibbs*, 383 U.S. 715, 16 L.Ed.2d 218, 86 S.Ct. 1130  
18 (1966) ("loose factual connection between the claims is generally sufficient" to  
19 establish supplemental jurisdiction). Accordingly, given the clear common nucleus  
20 of operative alleged facts in this civil action, it is proper for this Court to exercise  
21 supplemental jurisdiction over the state law claims. The removal of this civil  
22 action is therefore proper under 28 U.S.C. § 1441(a) because this is a civil action  
23 brought in state court over which the district courts of the United States have  
24 original jurisdiction, and this District Court embraces the place in which the state  
25 action is pending.

## VENUE

27        9.      Venue is proper in this district, pursuant to 28 U.S.C. § 1441(a),  
28 because the District Court for the Central District of California, Central Division, is

1 the judicial district and division embracing the place where the state court case is  
2 pending.

3 **THE OTHER PREREQUISITES FOR REMOVAL**  
4 **HAVE BEEN SATISFIED**

5 10. Defendants will promptly serve Plaintiff with this Notice of Removal  
6 and will promptly file a copy of this Notice of Removal with the clerk of the  
7 Superior Court of the State of California, for the County of Los Angeles, as  
8 required under 28 U.S.C. § 1446(d).

9 **NOW, THEREFORE**, Defendants respectfully request that this action be  
10 removed from the Superior Court of the State of California, for the County of Los  
11 Angeles, to the United States District Court for the Central District of California,  
12 and that all proceedings hereinafter in this matter take place in the United States  
13 District Court for the Central District of California.

14 Dated: October 23, 2015 MORGAN, LEWIS & BOCKIUS LLP  
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16 By /s/ Barbara A. Fitzgerald  
17 Barbara A. Fitzgerald

18 Attorneys for Defendants  
19 Gucci America, Inc. and Scott Fanslow  
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